2005 Investment Climate Statement for Bolivia

(updated January 2005)

Bolivia remains a difficult place to do business. Despite having the right laws in place, fluid currency exchange and liberal trade policies, the country is plagued by social issues related to centuries of social and racial inequality. In recent years, indigenous, labor and anti-globalization organizations have targeted private investment, especially foreign investment, as the cause of many of Bolivia's ills. There are bright spots in the economy, however, such as mining and textiles, but potential investors should investigate Bolivia carefully before making any investment, giving special attention to the specific region in which they will be working and the related political and social issues affecting the sector. Political violence is also a concern and, though rare, can escalate quickly. Investors should also understand that there is little respect for intellectual property rights (IPR). The occupation of private land by squatters is also increasing in frequency. In short, Bolivia may offer excellent investment opportunities for the risk-tolerant investor in certain sectors, but companies should expect to do extensive due diligence before committing funds in country.

Overview

After macroeconomic stability was achieved in 1986, five successive Bolivian governments avidly sought to attract foreign investors to speed the country's economic development. These governments were aware that large infusions of Foreign Direct Investment (FDI) were necessary – but not sufficient – for Bolivia to achieve per capita income growth. The capitalization program (Bolivia's version of privatization) was previously the centerpiece of the investment strategy. In the past few years, however, certain social groups have convinced the government to review contracts with foreign investors. In response, the Mesa Administration has promised to keep a close eye on foreign investors. These civil society groups specifically want the government to induce foreign and large domestic investors to pay more to the state and to contribute more to social development, as many in the Bolivian population have not seen or felt the beneficial effects of large investments in the country.

In the past year, however, the progress previously made to attract FDI has been jeopardized. After the October 2003 "Gas War" (see chapter 3), political pressure led to President Carlos Mesa's promise to change the 1996 hydrocarbons Law. On July 18, 2004, in a national referendum, Bolivians overwhelmingly voted to abolish the current hydrocarbon law and establish a new law that elicits greater revenues and take back State control of hydrocarbons activities. As of January 2005, negotiations in Congress continue to debate a new draft law, with many investors worried about the confiscatory direction in which the bill is heading.

Laws Governing Foreign Investment

Foreign ownership is allowed virtually throughout the economy, with no requirement to register foreign direct investment separately. The Bolivian Constitution restricts investments by foreigners in operations along the border areas, unless the investment or project is declared of national interest. Foreign investment is neither screened nor officially treated in a discriminatory manner. There are no registration requirements for foreign direct investors in Bolivia or any special incentives for domestic or foreign investment. That said, investments often do not receive the full protection offered by law due to sometimes inconsistent and arbitrary decisions by regulators, an easily corrupted and influenced justice system that can deny legal due process, and arbitrarily unfavorable interpretations of laws and regulations by government officials.

The Investment Law (Law 1182, 1990) guarantees that foreign investors will receive national treatment, have access to free currency conversion, enjoy unrestricted remittances, and the right to international arbitration in most industries.

Laws governing activities in the mining (Law 1777, 1997) and hydrocarbons (Law 1689, 1996) sectors authorized joint ventures with state-owned corporations and modified the tax system to allow foreign firms paying taxes in Bolivia to obtain foreign tax credits in their home countries. The Mining Law also allows foreign firms to operate within 50 kilometers of international borders through joint ventures or service contracts with the Bolivian Mining Corporation (COMIBOL), with the exception of firms that are residents of the country adjacent to the affected border. The Hydrocarbons Law allows settlement of disputes through arbitration. The Arbitration and Conciliation Law (Law 1770, 1997) provided procedures and enforcement mechanisms for international arbitration.

The Banking Law (Law 1488, 1993) established regulations for new activities such as leasing and foreign currency hedging. It also authorized banks to maintain accounts in foreign currencies, clearly a response to popular activity, as over 90 percent of all deposits in the Bolivian banking system are denominated in U.S. dollars (as of end 2004) or held in accounts linked to the exchange rate with the dollar. The Banking Law also clarified the roles of the Central Bank and the Superintendent of Banks and redefined capital and reserve requirements.

Bolivia has no laws that directly regulate competition, such as anti-trust laws in the United States. Instead, articles regulating unfair competition are scattered throughout the country’s laws governing activity in specific economic sectors.

The Government of Bolivia created the Sectoral Regulatory System (SIRESE) to balance the potential market power of monopolies. SIRESE is an autonomous regulatory body made up of a General Superintendent and five Superintendents, who regulate many aspects of business in the telecommunications, electricity, transport, hydrocarbons and water sectors. Prices of most public utilities are reviewed and approved by the respective Superintendent. Market forces largely set prices, though where necessary a regulated price is established through relatively transparent procedures and formulas. The exception to this is potable water and garbage collection, where municipalities set the local rates.

Most hydrocarbons exploration activity is carried out via joint venture contracts administered by Yacimientos Petroliferos Fiscales Bolivianos (YPFB), formerly the Bolivian state hydrocarbons company. This could change with passage of a new hydrocarbons law. Although most of the mines currently owned by the state-run Bolivian Mining Corporation

(COMIBOL) cannot be purchased outright, as stipulated by the Bolivian Constitution, they can be operated by private operators in a joint venture or under a leasing contract with COMIBOL.

The Agrarian Law (Law 1715, 1996) set out the rights and obligations associated with land ownership; incorporated the concept of sustainable development; established a new institutional framework for the development of land use; and created an independent Agrarian Superintendent to administer the law's provisions. A definitive registry of land titles – essential to the provision of credit – continues to be compiled, albeit slowly.

Foreign firms are able to participate in government research programs, although few if any programs exist. Work permit, visa and residence requirements are non-discriminatory.

The government sets a minimum monthly wage each year, currently about USD 55 per month, although nearly all workers in the formal private sector earn more than the minimum wage. On average, urban factory workers earn the equivalent of USD 100 per month plus benefits.

Although some bureaucratic procedures have been reduced, plenty of red tape and archaic procedures remain at all levels of the Bolivian Government. The last few administrations worked to "de-bureaucratize" the government, with modest success at best. Public sector corruption also remains a major challenge, with firms sometimes asked for bribes by public officials to speed up bureaucratic procedures or to avoid unpleasant, adverse actions.

Conversion and Transfer Policies

There is free currency conversion at local banks and exchange houses. The official exchange rate is set by a daily auction of dollars managed by the Central Bank. The Central Bank offers a given amount of U.S. dollars each day but sets an undisclosed minimum floor price. Since 1985, the Central Bank has managed a steady depreciation of the local currency, the Boliviano, in line with the rate of inflation and competitive devaluations of trade partners. The parallel rate has tracked the official rate closely, suggesting that the market finds the Central Bank's policy acceptable. Over the last few years, the Central Bank has tried to further encourage greater use of domestic currency in the banking system, with only limited success. Nevertheless, there are no restrictions on any kind of remittances or currency transfers.

Expropriation and Compensation

Article 22 of the Bolivian Constitution provides that property may be expropriated for the public good or when the property does not fulfill a "social purpose." It also stipulates that just compensation must be provided. The Mining and Hydrocarbons Laws provide the means to expropriate land needed to develop the underlying concession.

A significant State expropriation in Bolivia occurred in 1969, when the Government nationalized petroleum concessions granted to the local branch of Gulf Oil. Although the compensation agreement allowed for a 30-year payment period, the entire compensation due to Gulf Oil was paid off in seven years.

An additional incident occurred in 2000 when the Bolivian Government canceled a water concession in the city of Cochabamba. In 1997, the Government issued an international bidding process to call for tenders to privatize Cochabamba's water company (SEMAPA). Although the concession contract was awarded in April 1999 to Aguas del Tunari (an international consortium lead by International Water Limited/Bechtel), the water regulator revoked the contract after violent protests in Cochabamba in March and April of 2000. In early 2002, Bechtel and the Government of Bolivia submitted the case to the International Center for Settlement of Investment Disputes (ICSID) in New York, where arbitration procedures were filed. As of December 2004, both parties remain in talks aimed at reaching a settlement.

In early January 2005, the Bolivian Government revoked another water concession. In response to significant public pressure, President Carlos Mesa enacted a Supreme Decree unilaterally cancelling a contract to supply water to La Paz and El Alto.
The French investor, Suez Lyonnaise Des Eaux, enjoys the protection of a Bilateral Investment Treaty (BIT) between Bolivia and France.

Dispute Settlement

Property and contractual rights may be enforced in Bolivian courts, but the legal process is time-consuming at best and at worst subject to political influences and pervasive corruption. For that reason, the National Chamber of Commerce – with assistance from USAID – has established a local Arbitration Tribunal. The Investment Law provides that investors may submit their differences to arbitration in accordance with the constitution and international norms. The U.S.-Bolivia Bilateral Investment Treaty (BIT) entered into effect on June 7, 2001 and further extended protections for U.S. investors. As of December 2004, the BIT remains untested, though a number of companies are investigating their options under the Treaty, should a confiscatory hydrocarbons bill become law.

The Bolivian Government accepts binding international arbitration in all sectors. The 1997 Arbitration and Conciliation Law created an alternative means by which businesses can resolve commercial legal disputes and provided a more comprehensive framework for national and international arbitration. This law stated that international agreements, such as the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitrage Awards, must be honored. It also mandated the recognition of foreign decisions and awards and established procedures for the Supreme Court to execute any such decision or award.

There are a number of efforts under way to reform and improve Bolivia's justice system, which are beginning to show results in some regional courts. However, entrenched interests continue to resist the implementation of many reforms. We note that some decisions by the Supreme Court and Constitutional Tribunal in the past have been influenced by outside factors, throwing into doubt any ability to enforce these decisions effectively.

Nevertheless, the Bolivian Supreme Court, for the most part, has rendered decisions that have been fair and have benefited U.S. companies. However, neither Bolivian nor foreign companies can yet rely on the judicial system to enforce contracts or administer other forms of fair and impartial justice. It is highly recommended that U.S. companies include an international arbitration clause in all contracts with Bolivian private and public entities.

Bolivia has a Commercial Code (Decree Law 14379, 1977) whose roots date from 1939. Although many of its provisions have been modified and supplanted by other specific laws, the Commercial Code continues to serve as general regulation for commercial activities. Bolivia has no Bankruptcy Law although the previous administration submitted corporate restructuring and bankruptcy regulation bills to the Bolivian Congress in 2003. The Government recently passed legislation which created a "Hospital for Businesses" to assist companies with credit restructuring.

Performance Requirements/Incentives

The Bolivian Government does not impose any performance requirements as conditions for establishing, maintaining or expanding a business establishment. Nor does it provide tax or investment incentives that discriminate against foreign investors. Some local governments (municipalities) have established property tax exemptions for businesses located in their areas.

Right to Private Ownership and Establishment

Foreign and domestic entities share the same rights to establish, acquire and dispose of interests in business enterprises, as well as to engage in remunerative activity. All private enterprises enjoy the same access to markets, credit, licenses and supplies as public enterprises, given the exceptions noted above regarding the legal sanctioning of temporary monopolies.

Protection of Property Rights

In general, Bolivian law guarantees property rights. Both chattel and real property rights are recognized, though not consistently enforced. The Office of Property Registry provides a means to protect and facilitate acquisition and disposition of property rights for land, real estate and mortgages. Mortgages exist and can be obtained through the local financial system.

Successive administrations have sought to improve the enforcement of private property rights with varying degrees of success. The first Sanchez de Lozada Administration (1993-1997) enacted the Agrarian Law to reform the National Service of Agrarian Reform (INRA) and the Institute of Colonization, both of which handled land registry. Despite these reform efforts, challenges to land titles are common and an adequate system for title verification is lacking. Competing claims to land titles and the absence of a reliable legal process to resolve land title disputes creates risk and uncertainty in real property acquisition. There have been several allegations of corruption against INRA, the land-titling agency. Illegal squatting on private, rural properties is an ongoing, serious problem. The Embassy advises that investors not leave land or other properties unattended, given rampant squatting in both rural and urban areas.

Intellectual Property Rights

Bolivia's existing legislation governing protection of intellectual property rights (IPR) is insufficient, and enforcement efforts have been sporadic and largely ineffective. Piracy rates of videos, sound recordings, and software remain among the highest in Latin America. The only way one can currently attempt effective protection of trademarks or other intellectual property is to hire a local attorney to initiate a civil court action against offenders. The 1992 Copyright Law recognizes copyright infringement as a public offense, and the new Bolivian Criminal Procedures Code (enacted May 2001) provides for criminal prosecution of IPR violations. However, laws are largely not enforced and U.S. firms have had little success in getting justice in this area from Bolivian courts. The Embassy is aware of only one criminal IPR prosecution. Anti-IPR lobbies are strong in Bolivia.

The government is officially trying to modernize both its legislation and its enforcement capabilities regarding the protection of IPR, though little action has been taken since President Carlos Mesa took office. In 2000 and 2001, the Ministry of Justice drafted a new IPR law that was submitted to Congress for ratification. The bill has yet to be addressed, and there are not plans to include it in the 2005 legislative agenda. Bolivia is a member of the Andean Community (CAN). Therefore, CAN decisions – specifically CAN Decision 486 on IPR – should take legal precedence over Bolivia's national IPR-related laws, though few judges are even aware of the CAN decision, much less its applicability in Bolivia. The Bolivian Senate ratified the Patent Cooperation Treaty (PCT) in July 2003, though no action has been taken to enforce it.

In 1999, the Bolivian Government established an independent National Intellectual Property Rights Service (SENAPI), uniting under one authority the previously disparate offices in charge of enforcing industrial property rights and copyrights. This effort has brought some coherency to government efforts to protect IPR effectively. Bolivia has joined the World Intellectual Property Organization, and Congress approved accession to the Paris, Geneva and Bern Conventions. Unfortunately, SENAPI's reach is limited – it has no oversight of pirated medicines, for example, which are regulated by the Ministry of Health – and at least one political party has demonstrated its interest in re-politicizing the agency.

The Bolivian Copyright Law (Law 1322, 1992) provides IPR protection for literary, artistic and scientific works for the lifetime of the author plus 50 years. It protects the rights of Bolivian authors, of foreign authors domiciled in Bolivia, and of foreign authors published for the first time in Bolivia. Foreigners not domiciled in Bolivia enjoy protection under the Copyright Law to the extent provided in international conventions and treaties to which Bolivia is a party. Bolivian copyright protection includes the exclusive right to copy or reproduce work; to revise, adapt or prepare derivative works; to distribute copies of the work; and to communicate the work publicly.

Although the exclusive right to translate the work is not explicitly granted in the law, it does prevent unauthorized adaptation, transformation, modification and editing. The law also provides protection for software and databases.

The Bolivian Film and Video Law (Law 1302,1991) also contains elements of IPR protection. The law created the National Movie Council (CONACINE) in order to coordinate, control and carry out various activities related to the movie industry. The law also requires that all films and videos shown or distributed in Bolivia be registered with CONACINE.

Television stations have been among the worst IPR violators in Bolivia, often not paying rights to broadcast TV programs. The Superintendent of Telecommunications has implemented some measures designed to ensure that only licensed material is televised, but these actions have been limited, and TV piracy continues to thrive.

As of now, patent registrations are reviewed for form rather than for substance. A notice of the proposed patent registration is then published in the Official Gazette. If there are no objections within 50 days, a patent is granted for a period of 15 years. The patent must be used in Bolivia within two years to preserve its validity.

The registration of trademarks parallels that of patents, except that the period for objections to a trademark registration is 18 months after publication. Once obtained, a trademark is valid for a 10-year period and is renewable. It becomes null if not used over an 18-month period.

While there had been a significant backlog in patent and trademark registrations before 2002, SENAPI made significant progress in 2003. SENAPI lacks the institutional capacity and political weight to effectively enforce IPR laws and regulations. Since 2003, USAID has been supporting the non-political institutionalization of SENAPI.

There are presently no laws protecting trade secrets.

Transparency of the Regulatory System

The Sectoral Regulation System (SIRESE) was established in October 1994 to control and supervise the activities pertaining to electricity, telecommunications, hydrocarbons, transportation and water sectors. The Electricity Law (Law 1604, 1994), the Telecommunications Law (Law 1632, 1995) and the Hydrocarbons Law (Law 1689, 1996) defined the characteristics and functions of their respective superintendents.

The five superintendencies, each headed by a separate superintendent, are autonomous institutions whose activities are financed through the assessment of fees on firms operating in their respective sectors. The General Superintendent, whose office is empowered to hear appeals of any decision by a superintendent, heads SIRESE. Concessions of public services and licenses are granted by administrative resolution issued by the respective superintendent.

The SIRESE Law (Law 1600, 1994) establishes general principles governing anti-competitive practices. Specifically, companies engaged in regulated activities are forbidden from participating in agreements, contracts, decisions and/or practices whose purpose or effect is to hinder, restrict or distort free competition.

A similar system has recently been created for the financial sector. However, several laws have changed its structure over the last five years. Most recently, the “Bonosol Law” and Supreme Decree 27026, enacted on May 6, 2003, re-established the duties for the General Superintendent of SIRESE and its Superintendencies.

In April 2002, the Bolivian Congress approved a new Administrative Procedures Law (Law 2341, 2002) designed to enhance public participation in the rulemaking process and strengthen the administration of public agencies.

Efficient Capital Markets and Portfolio Investment

Historically, Bolivian commercial banks were closely held operations that lent only to persons or firms well known to the bank. Foreign institutions and shareholders hold a large segment of the Bolivian banking system today and have brought international norms to Bolivia with them. As a result, Bolivian bankers are developing in-house capabilities to adjudicate credit risk and to evaluate expected rates of return according to international norms.

Foreign investors may find it difficult to qualify for loans from local banks due to a previous requirement that domestic loans be made only against domestic collateral. In 1993, the Superintendency of Banks issued new regulations designed to facilitate bank lending to companies based on a cash flow analysis. Since commercial credit is generally extended on a short-term basis at high interest rates, most foreign investors prefer to obtain credit from foreign sources.

Another option available to established Bolivian companies is the issuance of short- or medium-term debt in the local stock market. Currently, the principal activity of the exchange is to provide a secondary market for Central Bank certificates of deposit. The Bolivian stock market seeks, however, to expand handling of local corporate bond issues, and the passage of the Securities Law (Law 1834, 1998) provides the groundwork for creating a truly modern exchange. Several Bolivian companies and some foreign companies have been able to raise funding from the Bolivian capital market over the last years.

The Securities Law also established a securities commission that has already approved the establishment of several Bolivian mutual funds. Unfortunately, few local companies issue stock, making the choices for these funds quite limited. Although most accounting regulations follow international principles, Bolivian accounting procedures and reports do not yet conform to world standards. It is common for Bolivian firms to maintain various sets of books: one set for the tax authorities; another for its bankers; and another for the management’s own use.

The Banking Law (Law 1488,1993) was a first step towards modernizing the Bolivian banking system, as it addressed emerging areas such as establishing rules governing leasing and setting parameters for bank holding companies. The Central Bank Law (Law 1670, 1995) refined the Central Bank's authority over the banking sector, setting higher reserve requirements and eliminating insider lending that had led to the collapse of many Bolivian banks.

After the Banzer/Quiroga Administration (1997-2002) enacted additional changes to the regulatory financial framework such as the Law of Property and Popular Credit (Law 1834, 1998), the Sanchez de Lozada Administration enacted the "Bonosol Law" (Law 2427, 2002) and the Supreme Decree 27026, which partially modified the regulatory system governing the banking and financial regulatory framework.

As a result of 1999 – 2003's economic stagnation, most bank indicators headed south. Banks' portfolios decreased from USD 4 billion in 1999 to USD 2.5 billion at the end of 2004. Deposits fell by USD 200 million in the first nine months of 2004 alone, from USD 2.7 billion at the end of 2003 to USD 2.5 billion. Liabilities with foreign creditors increased from USD 70 million in December 2003 to USD 75 million as of September 2004.

The portfolio of loans in arrears has been the most worrisome factor in Bolivia's recent banking history, increasing from 11.6 percent at the end of 2000 to 25.5 percent in October 2004. Bank managers reacted by conducting financial operations more carefully and closely following prudential lending norms. The private sector has complained and lobbied the last two administrations to ease credit eligibility and establish debt-restructuring schemes. It is probable that non-performing figures do not reflect all overdue payments. Due to a large debt restructuring and rescheduling program, looking at the non-restructured portfolio may prove to be a more reliable indicator of a bank's health. The overall non-restructured portfolio has dropped from 83 percent at the end of 2003 to 60 percent as of September 2004.

Nevertheless, there is a body of financial regulation that establishes some limits in order to promote stability for shareholders and prevent conflicts of interest. Regulations also restrict financial transactions for managers and senior managers.

The securities regulator is in the process of drafting several regulations that will prevent hostile takeovers and protect minority shareholders. Also there is generally positive agreement about the urgency of passing a law on corporate governance. There are no regulations that limit foreign investment or participation in or control of domestic enterprises.

Political Violence

Bolivia is prone to periods of social unrest that can quickly turn violent and disrupt the transportation of people and goods on the country's principal highways. In March/April 2000, violent protests against foreign investment in the municipal water system of Cochabamba ultimately spread throughout the country in the form of roadblocks and demonstrations. Roadblocks were even more serious in September/October 2000, when rural indigenous groups, illegal coca growers, and a variety of labor and social movements coalesced in opposition to various government policies. Concessions by the Government ended those and subsequent protests, but not before the roadblocks had caused serious economic hardship and disrupted Bolivian exports. Less serious but also disruptive and violent social protests occur regularly in La Paz and El Alto, with some U.S.-owned businesses reporting up to 30 days of lost work per year.

In a serious threat to democracy, units of the National Police mutinied against the Sanchez de Lozada administration in February 2003. Spurred on by a misunderstood government proposal to create an income tax, mutinous police units fought loyal military units, and, with the police absent, rioters subsequently looted and burned various government buildings and private businesses. Though order was restored within 36-hours with minimal damage to U.S.-linked companies, the death toll in La Paz was over 30. Violence was even worse during October 2003's "Gas War," in which over 60 people died. The "Gas War," which was spurred on by radical social elements and opposition political parties, finally ended with the resignation of Sanchez de Lozada.

President Carlos Mesa has been unwilling to confront most protesting groups, even vowing that he would not use force against protestors. Investors should understand that protests, especially in La Paz/El Alto and along gas transport pipelines, are commonplace. These protests can sometimes turn violent.

Corruption

Bolivia has a significant corruption problem in both the public sector and in many other non-governmental institutions. Corruption undermines the benefits of resources allocated to fight poverty and constrains economic development. Since officials accused of acts of corruption are almost never punished, the public's distrust of the political system is high. In an attempt to control the root causes of corruption, the Bolivian Government in recent decades has implemented several reforms and measures to modernize the State, improve existing legislation, and increase citizen participation within the framework of a new state/society relationship of mutual responsibility. Nevertheless, public perception of corruption remains high.

Within this context, several laws were passed, including the Financial Administration and Control Law (SAFCO) law, the State Employees Statute Act, and the Sworn Declaration of Property and Income Law (Declaracion Jurada de Bienes y Rentas). In order to stimulate the institutionalization of public administration and to provide a structural answer to the corruption problem, institutions such as the Judiciary Council (Consejo de la Judicatura), Human Rights Ombudsman (Defensor del Pueblo), Constitutional Court, and the Civil Service Superintendency were created. There is even a Cabinet-level Presidential Delegate empowered to investigate corruption at any level and in any branch of the government. The National Integrity Plan intends to widen the structural response to the problem of corruption through judicial reform and modernization of the state. Under the Plan's Project of Institutional Reform (PRI), the Customs Service, the National Revenue Service, the National Road Service and the Ministries of Housing, Education and Agriculture have been reformed and professionalized.

With international assistance, the last several governments have worked to overhaul the National Customs Service. The new Customs Reform Law was enacted in August of 1999 and implemented over a 36-month period. The National Customs Service has reportedly reduced corruption somewhat, but contraband continues to flow into Bolivia. The Minister of Finance heads a multi-agency council on contraband issues.

Bilateral Investment Agreements

Bolivia has signed bilateral investment agreements (BITs) with Argentina, Belgium/Luxembourg, China, France, Germany, Italy, Mexico, the Netherlands, Peru, Romania, Spain, Switzerland, the United Kingdom and the United States (1997). The U.S.-Bolivia BIT was fully implemented on June 7, 2001.

There are six basic reciprocal provisions of the U.S.-Bolivia BIT:

- U.S. investors are entitled to the better of national treatment or most favored nation (MFN) treatment when they seek to initiate investment and throughout the life of that investment, subject to certain limited and specifically described exceptions listed in annexes or protocols to the treaties.

- Expropriation can occur only in accordance with standards put forth in international law, that is, for a public purpose, in a nondiscriminatory manner, under due process of law, and accompanied by prompt, adequate, and effective compensation.

- BITs provide U.S. investors the right to transfer funds into and out of the host country without delay using a market rate of exchange. This covers all transfers related to an investment, including interest, proceeds from liquidation, repatriated profits and infusions of additional financial resources after the initial investment has been made.

- The Treaty limits the ability of either government to require investors to adopt inefficient and trade distorting practices. For example, performance requirements, such as local content or export quotas, are prohibited.

- It gives investors the right to submit an investment dispute with the treaty partner's government to international arbitration. There is no requirement to use that country's domestic courts.

- It gives investors the right to employ the top managerial personnel of their choice, regardless of nationality.

OPIC and Other Investment Insurance Programs

An Investment Insurance Agreement signed in 1985 by Bolivia and the U.S. Overseas Private Investment Corporation (OPIC) provides for a full range of OPIC programs, including insurance, financing and use of OPIC's Opportunity Bank. OPIC provides financing assistance through direct loans and through guarantees of loans by private U.S. financial institutions for investments by U.S.-based firms in Bolivia. OPIC has worked with a growing number of new investors, particularly in providing project loans, insurance against inconvertibility, expropriation and political risk.

The International Bank for Reconstruction and Development's (IBRD) Multilateral Investment Guarantee Agency (MIGA) has offered a complete line of investment guarantees to foreign investors in Bolivia since October 1991.

The U.S. Export-Import Bank (EXIM) also has operations in Bolivia. It has offered credit guarantee facilities to local banks, with terms of up to five years. EXIM is also willing to work directly with qualified private companies in providing loans and insurance. EXIM will also consider individual transactions with Bolivian banks that do not yet have sufficient net worth to qualify for the establishment of a credit guaranty facility.

Labor

Approximately two-thirds of Bolivia's population of 8.3 million is considered "economically active," a figure that includes early teenagers and as well as children who are legally prohibited from working. Unemployment in 2004 is projected to be 9.5 percent, but of those employed only one-third were working 40 hours a week. The ILO definition of an "economically active" or employed person masks substantial underemployment and subsistence-level "informal" economic work.

As of December 2004, the official minimum wage remains approximately USD 55 per month. General economic stagnation from 1999 through 2003 resulted in slipping nominal wages, with the average wage for formal urban employment at USD 70 per month. Bolivia's still substantial rural population, often self-employed in subsistence agriculture, earns far less. Overall, between 60 and 65 percent of working Bolivians are considered to be participants in the "informal economy," where no contractual employee-employer relationship exists.

Foreign investors have found the labor force to be stable, with low rates of turnover and high levels of manual dexterity. The country's generally low levels of education and literacy tend to limit the productivity of Bolivia's labor, in line with its low cost. There is abundant manpower readily available for foreign as well as domestic investors, although skilled manpower is harder to find.

The average wage for a factory worker is about USD 120 per month. Benefits – including a Christmas bonus equal to one month's salary, as well as retirement payments – can add another 30 percent to the wage bill.

Bolivian Labor Law guarantees workers the right to organize and bargain collectively. Most companies are unionized. Nearly all unions belong to the Confederation of Bolivian Workers (COB). Despite international perceptions, extensive labor unrest in the private sector is uncommon in Bolivia, and most foreign firms enjoy positive labor-management relations.

Bolivian Labor Law guarantees workers the right of association, restricts child labor and provides for worker safety. Effective enforcement, however, often proves to be lacking.

Foreign Trade Zones/Free Ports

The Bolivian government created free trade zones (FTZs) by way of two Supreme Decrees (D.S. 22410 and D.S. 22526). The establishment of any FTZ operation must be authorized by the National Council on Free Trade Zones (CONZOF), which coordinates, sets and controls all industrial and commercial free zones. Currently FTZs exist in the cities of:

1. El Alto (the Department of La Paz);
2. Santa Cruz;
3. Cochabamba;
4. Puerto Aguirre (on Bolivia's eastern border with Brazil);
5. Oruro; and
6. Desaguadero (on the Peruvian border).

One other FTZ in Guayaramerin in the Department of Beni is not yet fully operational. The FTZ in Cobija, in northern Bolivia, has not proven to be attractive to investors because of the lack of roads and other basic infrastructure. All Bolivian labor laws apply in FTZs.

Foreign Direct Investment (FDI)

As of December 2004, the National Statistic Institute (INE) had not completed FDI statistics for 2003 or 2004. The following FDI figures are estimated using balance of payments figures, which are monitored by the Bolivian Central Bank. According to this analysis, net FDI has been falling, from USD 674.1 million in 2002 to USD 160.2 million in 2003. Gross FDI, illustrated below, has also declined in recent years.

We note that net investment is equivalent to total investment less deductions or outflows, including portfolio investment in other economies and profit remittances to shareholders. For Balance of Payments issues, net FDI values are important, while gross FDI factors into economic growth projections.

Private gross FDI flows (in USD millions)

	2002	2003	2004
Hydrocarbons	462.8	247.7	NA
Mining	11.5	20.4	NA
Industry	91.1	62.1	NA
Construction	282.9	88.5	NA
Financial Services	54.9	9.3	NA
Other	31.1	139.0	NA
Total	979.3	567.0	NA

* NA = Not available as of January 2005
Source: National Institute of Statistics (INE)

Bolivian gross FDI by country (in USD millions)

	2002	2003	2004
United States	288.7	189.3	NA
Spain	267.6	62.7	NA
Brazil	181.9	61.1	NA
France	60.2	32.9	NA
United Kingdom	50.3	62.5	NA
Argentina	31.1	20.3	NA
Italy	26.9	26.5	NA
Peru	5.9	2.0	NA
Chile	5.0	4.7	NA
Canada	0.6	1.8	NA

* NA = Not available as of January 2005
Source: National Institute of Statistics (INE)